

EXHIBIT 3

PART III

Katherine Kinsella

HIGHLY CONFIDENTIAL
Cambridge, MA

June 16, 2006

Page 92

1 based on 13 years of work, that these are the most
2 widely circulating publications and have a very
3 strong reach, more so than any other publications,
4 against adults 18-plus, which includes all -- I
5 would assume that your heirs and executors are 18-
6 plus.

7 Q. But you didn't do any work to determine and,
8 in fact, did not know that Class 1 consisted also of
9 heirs and executors?

10 A. Didn't do any what kind of work?

11 Q. Any work to develop your media program to
12 target that portion of Class 1?

13 A. When I learned that there were heirs
14 involved in that, I could have had the choice of
15 going back and adjusting it, and I didn't, because I
16 know the media that we used in here and I know how
17 effective it is against all age groups; and,
18 therefore, it was not necessary.

19 Q. But you haven't given any opinion to the
20 court as to what percentage of that audience you're
21 reaching, whether -- you didn't consider whether
22 there were other alternatives in the media to reach

Katherine Kinsella

HIGHLY CONFIDENTIAL
Cambridge, MA

June 16, 2006

Page 93

1 that audience?

2 A. What is the audience?

3 Q. You tell me. You didn't do any research to
4 determine what it was, did you?

5 A. An heir and an executor is going to be an
6 adult. It could be a male. It could be a female.
7 It could be at any particular age. It's likely
8 they're going to be older, but I do know that the
9 media that I've selected reaches deeply into adults
10 18-plus. It's the highest circulating publications
11 available; not all of them, but almost all of them.

12 Q. And you can't tell us what those numbers
13 are, those reach numbers?

14 A. There is no such thing as a target for, you
15 know, people who are heirs and executors. There's
16 just -- it's not a measurable target. I have to
17 deal with measurable targets for the courts. I know
18 the media I've selected is reaching it based on 13
19 years of work.

20 Q. And you make that determination after the
21 fact. It's just you got lucky because you didn't
22 even know it when you developed your program, did

Katherine Kinsella

HIGHLY CONFIDENTIAL
Cambridge, MA

June 16, 2006

Page 137

1 Q. It says, "If you do not wish to participate
2 in either or both of the Classes, you must mail a
3 personally signed, written request to be excluded to
4 the address below."

5 It doesn't give any details about what
6 should be included in any exclusion request. Is
7 there a reason for that?

8 A. Yes, this is a summary notice.

9 Q. It doesn't suggest or allow for the
10 possibility that a member of the class against my
11 client, AstraZeneca, could make different decisions
12 if that person happened to use Zoladex but also
13 happened to be a member of another class. It
14 doesn't allow for that, does it?

15 A. Do you mean -- is what you're asking if
16 somebody wanted to -- who took Zoladex and another
17 drug covered in these classes, if they wanted to opt
18 out in one, they would not be able to opt out in the
19 other?

20 Q. Uh-huh. Doesn't it suggest that it's all or
21 nothing?

22 A. Yes, to some -- I mean, it suggests that if

Katherine Kinsella

HIGHLY CONFIDENTIAL
Cambridge, MA

June 16, 2006

Page 138

1 the claims in this are that these average wholesale
2 prices were allegedly reported false and inflated,
3 that that's true, it's a class-wide consideration
4 unless the judge rules that in the first trial or
5 the second trial and the third trial that that's not
6 true for a specific defendant.

7 Q. So your publication process here and content
8 assumes that people will not make individual
9 decisions based on the particular drug they were
10 exposed to in terms of their opt-out decision?
11 Generally they opt in for all or opt out for all?

12 A. Well, they can make that determination by
13 asking a question. They have complete ability to
14 call and ask that question.

15 Q. But they'd have to do that in order to
16 figure out what they should say in their opt out
17 exclusion letter to effect the particular outcome
18 that they want; is that right?

19 A. They would have to get the long form notice,
20 which is how published notice works.

21 Q. Now, does the long form notice allow for
22 opt-out decisions based on particular manufacturers

Katherine Kinsella

HIGHLY CONFIDENTIAL
Cambridge, MA

June 16, 2006

Page 139

1 or particular drugs?

2 A. No, it does not, but I thought you were
3 referring to what they should include in their
4 letter for exclusion.

5 Q. And in order to be excluded from one class
6 and not another, there's nothing in the publication
7 notices, either long form or short form, that
8 suggests that is a possibility; is that right?

9 A. Right, and I don't think that the judge said
10 that it was a possibility. I mean, if the judge
11 thinks that that's the way it should be, that people
12 should have the opt-out right by drug, then that's
13 something that the judge has to tell me, and I will
14 do what I'm supposed to do.

15 But I didn't see anything in the
16 certification order that said you were opting out of
17 classes, you weren't opting out of certain drug
18 usage.

19 Q. So in your view, this is not a separate
20 class action against my client, AstraZeneca, with
21 respect to Zoladex, correct?

22 A. It will be in terms of the trial for -- and

Katherine Kinsella

HIGHLY CONFIDENTIAL
Cambridge, MA

June 16, 2006

Page 155

1 Once again, this is a summary. It can
2 go -- I have no issues with it not being in there.

3 Q. Would it be better?

4 A. It would give a fuller picture.

5 Q. Page 4 of the notice, "A lawsuit has been
6 filed against a number of drug companies on behalf
7 of people who paid for one or more of the drugs --
8 called 'Covered Drugs' -- see Question 11," does
9 that sentence make --

10 MR. NOTARGIACOMO: I'm sorry, you're on
11 Page 4?

12 MR. FLYNN: Page 4.

13 MR. NOTARGIACOMO: Where on Page 4?

14 Q. First line, "Why did I get this Notice?"
15 First sentence.

16 Does that first sentence make sense to
17 you grammatically? What's it saying?

18 A. Well, the way this was intended -- and it
19 certainly could be wordsmithed in a better way, if
20 you choose. They've already got a bullet on the
21 first page that says, "The Court has said that the
22 lawsuit can go forward on behalf of 'two Classes' or

Katherine Kinsella

HIGHLY CONFIDENTIAL
Cambridge, MA

June 16, 2006

Page 156

1 groups of people that made co-payments for certain
2 drugs," and then they have the designation of
3 covered drugs.

4 In here, "A lawsuit has been filed
5 against a number of drug companies on behalf of
6 people who paid for one or more of the drugs," and
7 we could have put a period there and said, "These
8 are called 'Covered Drugs,'" and repeat what we said
9 on the first page, "See Question 11."

10 Q. So your testimony is that you could see some
11 wordsmithing --

12 A. It could be wordsmithed in a different way,
13 but I don't think it's grammatically incorrect. "A
14 lawsuit has been filed against a number of drug
15 companies on behalf of people who paid for one or
16 more of the drugs -- called 'Covered Drugs.'" This
17 is an obvious reference back to the fact that we
18 defined what the covered drugs were earlier on in
19 this notice.

20 Q. So on balance, would you --

21 A. I could put a period in there. I'd be happy
22 to do that.

Katherine Kinsella

HIGHLY CONFIDENTIAL
Cambridge, MA

June 16, 2006

Page 157

1 Q. Then it says, "You received this Notice
2 because you may have made a co-payment for a Covered
3 Drug between either January 1, 1991 and December 31,
4 2004 or January 1, '91 and June 1, 2006." Now,
5 those time periods in that sentence, they overlap.

6 A. They do overlap.

7 Q. Is there a reason why you think it's less
8 confusing to write it this way given the overlap?

9 A. We kept it according to the exact definition
10 in the class. It could be written differently.

11 Q. Again, this is a function of the fact that
12 this notice is trying to deal with both Class 1 and
13 Class 3?

14 A. That doesn't mean that's why it's confusing.
15 I mean, once again, there are four bullets on the
16 front page. The way this is written, this document
17 flows from those -- it flows from the headline into
18 the key bullets into a summary chart of your rights,
19 then it goes on in detail according to certain
20 questions. So in that bullet on the first page, it
21 defines the two different classes and the two
22 different time periods.

Katherine Kinsella

HIGHLY CONFIDENTIAL
Cambridge, MA

June 16, 2006

Page 176

1 way or another as to whether or not it would be
2 difficult to do that?

3 A. I have done a lot of focus panels, but not
4 around class notice, primarily around very small
5 communications. I think it would be very difficult
6 to have -- establish a focus group that would be --
7 that would go through a document of this length. I
8 think it's just -- I think focus groups are very
9 useful for certain things. I'm not sure it would be
10 useful for this.

11 Q. How about the short form notice?

12 A. Short form notice you could do it.

13 Q. Class 2 for a moment, if we could just
14 switch gears to that. I think in your papers you
15 have a definition that the court has adopted for
16 Class 2. If you just want to look at that so you
17 can refresh your recollection and know what that is.

18 A. You're talking third-party payor long form
19 notice?

20 Q. No, I'm talking Class 2, which is the
21 Massachusetts MediGap class.

22 A. Right, sorry, yes. And what other document

Katherine Kinsella

HIGHLY CONFIDENTIAL
Cambridge, MA

June 16, 2006

Page 177

1 am I looking at now?

2 Q. I was just asking you to refer -- I'm not
3 going to ask you a particular question about the
4 definition, but just so you have it in mind, I think
5 the definition is included in your notice program,
6 which is an attachment to your declaration.

7 A. Yes, it is. That's the long -- yes, it is,
8 absolutely.

9 Q. On Page 6 of Exhibit A you have the
10 definition of Class 2. Now, with respect to that
11 class, your program does call for actual notice in
12 the first instance to that class; is that right?

13 A. That's correct.

14 Q. And your affidavit indicates in Paragraph
15 15, if you'd like to turn to it, that the notice of
16 class pendency to Class 2 will be mailed directly to
17 these entities and that, to compile the names and
18 addresses of these entities, you will use the
19 proprietary TPP database compiled by Complete Claim
20 Solutions, the class administrator.

21 A. Uh-huh, yes.

22 Q. Do you know how that database was compiled

Katherine Kinsella

HIGHLY CONFIDENTIAL
Cambridge, MA

June 16, 2006

Page 178

1 that CCS uses?

2 A. Yes. I don't know every detail about it,
3 but I did ask them a lot of questions about this.
4 Initially they used these sources that are listed
5 there, A through J, as a way of developing a base.
6 Then they add it to that. And this would be an
7 overall base that would include both fully insured
8 as well as self-insured and HMOs and PBMs and
9 third-party -- other third-party payors. And they
10 developed that originally, and they have added to it
11 through the class actions that they have noticed and
12 administered, and I think they've done about 13
13 third-party payor class actions.

14 In my working with them on this, I asked
15 them to please verify for me the information they
16 had and to update any lists that they had, and the
17 database grew over time. In the last two class
18 actions they did, Hytrin and Paxil, their database
19 expanded. And during this situation I asked them to
20 go back in and look and be very clear with me about
21 the self-funded versus the fully insured entities
22 that were in there and to make sure they had updated

Katherine Kinsella

HIGHLY CONFIDENTIAL
Cambridge, MA

June 16, 2006

Page 179

1 lists.

2 So this -- their overall database with
3 all their information in there is about 65,000. Of
4 that we've identified to mail certainly to 16A, B,
5 and C, as well as additional entities that they have
6 in that database that they have identified over the
7 course of the litigations that they've been involved
8 in.

9 Q. Do you know how many of the entities -- do
10 you know overall how many entities are in the
11 database?

12 A. I think it's about 65,000, but they're not
13 all -- there's different groupings. As I said,
14 fully insured and self-insured, but I think it's
15 roughly about 65,000 at this point.

16 Q. Do you know how many entities in the
17 database have their principal place of business in
18 Massachusetts?

19 A. I do not know.

20 Q. Do you know if it's determinable?

21 A. I don't know that. I think it could be with
22 some work.

Katherine Kinsella

HIGHLY CONFIDENTIAL
Cambridge, MA

June 16, 2006

Page 180

1 Q. Under your plan will the notice be mailed to
2 every entity in the database?

3 A. No, it will be mailed to the -- in Paragraph
4 No. 16 -- approximately 29,000 companies with 100 or
5 more employees, the third-party claim
6 administrators, and the 1,300 member companies of
7 the AHIP plans, and I think we're looking at
8 probably around 40,000, 42,000, 43,000 entities.

9 Q. How do you determine which of those entities
10 made reimbursements for drugs purchased in
11 Massachusetts, if you can?

12 A. We are not going to do that. We are, to the
13 best of our ability, identifying anybody who may be
14 in Class 2 and using available data to mail them.

15 Q. But there's no -- as far as you know,
16 there's no -- there's no effort underway to isolate
17 it to a Massachusetts principal place of business or
18 those who reimburse for drugs in Massachusetts?

19 A. No, there isn't.

20 Q. Okay. Is there any effort underway to
21 figure out who the proper addressee at these
22 institutions should be?

Katherine Kinsella

HIGHLY CONFIDENTIAL
Cambridge, MA

June 16, 2006

Page 181

1 A. I asked that question myself. It is either
2 the people they have identified as the person to
3 provide notice to through the other 13 cases that
4 they worked on, or short of that, it would be to the
5 chief executive officer.

6 Q. And, again, the schedule suggests that these
7 would be mailed out beginning on June 26th, and that
8 was assuming a prior series of determinations by the
9 court; is that right?

10 A. Yes. We started -- we talked about now
11 starting on the 26th and going through the next,
12 well, total three weeks.

13 Q. That schedule now no longer holds?

14 A. I believe it no longer holds.

15 Q. Let's go quickly to the short form of notice
16 for that class, Class 2. This short form, again,
17 talks about two different classes. Do you see that?

18 A. Yes.

19 Q. A MediGap TPP class and a Massachusetts
20 class.

21 A. Uh-huh.

22 Q. What is the distinction between those two

Katherine Kinsella

HIGHLY CONFIDENTIAL
Cambridge, MA

June 16, 2006

Page 182

1 classes?

2 A. Let me just look at the definitions and see
3 if I can... Well, I can't -- well, it appears --
4 I'll do my best to answer this, that the -- it
5 appears that the Class 3 says third-party payors who
6 made reimbursements based on contracts expressly
7 using AWP as a pricing standard for purchases in
8 Massachusetts, and all third-party payors who made
9 reimbursements on contracts expressly using AWP as a
10 pricing standard and have their principal place of
11 business in Massachusetts.

12 In Class 2, it says based on AWP for a
13 Medicare Part B coverage subject drug, so that Class
14 concerns Medicare.

15 Class 3 includes people who bought their
16 drugs outside the Medicare context. That's my
17 understanding.

18 Q. So for either class the TPP has to either be
19 based in or have beneficiaries in Massachusetts; is
20 that right?

21 A. That's correct.

22 Q. But for some reason one is called the

Katherine Kinsella

HIGHLY CONFIDENTIAL
Cambridge, MA

June 16, 2006

Page 183

1 Massachusetts class and the other is not. Do you
2 think that's confusing at all?

3 A. Well, if they read on -- I think if they had
4 any confusion at all it would be cleared up in the
5 paragraph right above what are their rights, because
6 it says, "In order to be a member of either the
7 MediGap TPP Class or the Massachusetts Class, the
8 reimbursements must have been for a beneficiary in
9 Massachusetts or the TPP must have its principal
10 place of business in Massachusetts." You could call
11 it something else.

12 Q. Let me ask you to turn to your declaration.
13 Affidavit, I'm sorry. Paragraph 33, the very last
14 paragraph. Take a minute to take a look at that.

15 A. May I just go to the bathroom real quick?

16 Q. Absolutely.

17 (Recess taken)

18 BY MR. FLYNN:

19 Q. Paragraph 33 provides your reasons for why
20 the publication notices in this case are for all the
21 defendants and not separated out for each defendant;
22 is that right?

Katherine Kinsella

HIGHLY CONFIDENTIAL
Cambridge, MA

June 16, 2006

Page 184

1 A. That is right.

2 Q. Do you have anything to add as a reason for
3 that decision to what is contained in Paragraph 33?

4 A. No, I do not.

5 Q. The first reason says that the direct mail
6 list of TPPs is identical for each defendant; is
7 that right?

8 A. Yes.

9 Q. That is not a reason why the consumer
10 notices are combined, right?

11 A. No.

12 Q. That has no impact as to why you would have
13 multiple as opposed to a single publication notice
14 for the consumer class?

15 A. That is correct.

16 Q. You also say that the target audiences,
17 which you define as Medicare recipients and
18 branded/generic drug users, for the purchase of paid
19 media are the same for each defendant.

20 A. Right.

21 Q. And we've talked about that before, and that
22 is given what you've defined as your target

Katherine Kinsella

HIGHLY CONFIDENTIAL
Cambridge, MA

June 16, 2006

Page 192

1 A. It's not included in here.

2 MR. TRETTER: Have a good weekend,
3 everybody.

4 (Mr. Tretter leaves proceedings)

5 Q. The next one you have is USA Weekend.

6 A. Correct.

7 Q. Average issue of USA Weekend is read by 27.3
8 percent of Medicare recipients and 25.3 percent of
9 branded/generic prescription drug users. Same
10 question, do you know the percentage of men who read
11 those publications?

12 A. I do not for any of these publications, but
13 I can get that information.

14 Q. Okay. And the same question, you don't know
15 and it's not included in your materials as to the
16 percentage of Medicare recipients who are men who
17 read those things?

18 A. No.

19 Q. And that would be the same for any of these
20 newspapers that are included there. Same with
21 American Profile; is that right?

22 A. Right.

Katherine Kinsella

HIGHLY CONFIDENTIAL
Cambridge, MA

June 16, 2006

Page 193

1 Q. Turning to the magazines, can you tell me
2 for any of the magazines listed what is the
3 readership of men over 65?

4 A. I don't have that information with me.

5 Q. But it is something that could be found?

6 A. Yes, it's something that could be found.

7 Q. People magazine is indicated that the
8 readership is 71 percent female, as we've talked
9 about before; is that right?

10 A. That's correct.

11 Q. And 71 percent age 18 to 49; is that
12 right?

13 A. That's correct.

14 Q. Reader's Digest, 61 percent female
15 readership, correct?

16 A. That is correct.

17 Q. Better Homes & Gardens, you don't have a
18 percentage in there. I think I have a document that
19 provides that.

20 MR. FLYNN: Can we just mark this quickly,
21 see if that's consistent with your view. This will be
22 Exhibit Kinsella 009.

Katherine Kinsella

HIGHLY CONFIDENTIAL
Cambridge, MA

June 16, 2006

Page 194

1 (Exhibit Kinsella 009 and Exhibit
2 Kinsella 010 marked for identification)

3 Q. I've handed you Exhibit Kinsella 009 and
4 Exhibit Kinsella 010, which are printouts from
5 websites showing percentage breakdowns of the
6 demographics for readership of Better Homes & Gardens
7 and National Geographic. For Better Homes & Gardens
8 it indicates that at least in the fall of 2005 that
9 readership was 79.1 percent women. Is that consistent
10 with your understanding of Better Homes & Gardens?

11 A. This is an MRI profile that would be
12 consistent, correct.

13 Q. National Geographic has 46.8 percent female
14 and 37.7 percent over the age of 55, is that what
15 that document shows?

16 A. Yes. It shows that this skews male, and it
17 shows that it skews slightly younger.

18 Q. And is that -- do you have -- have you
19 worked with National Geographic before?

20 A Yes

21 Q. Is that consistent with your understanding
22 of their profile?

Katherine Kinsella

HIGHLY CONFIDENTIAL
Cambridge, MA

June 16, 2006

Page 195

1 A. It is consistent.

2 Q. Okay. Now, you talk about trade
3 publications, National Underwriter and HR Magazine.

4 A. Yes.

5 Q. Do you have any information as to what their
6 distribution is in Massachusetts?

7 A. No, I do not.

8 Q. In terms of --

9 A. Oh, actually, I might. Yes, I do. Yes, I
10 do. I haven't looked at it, but I do have it. It's
11 in the descriptions that I've provided.

12 Q. Can you point me to where? Oh, in the
13 produced documents?

14 A. Yes, in the produced documents. It will
15 only take me a moment to find it. There is a
16 geographical breakdown in both of these kits here
17 of -- by state.

18 Q. Do you want to just identify that by the
19 Bates numbers?

20 MS. HECTOR: 129 through 136.

21 MR. NOTARGIACOMO: It's AWP-KIN-00133.

22 THE WITNESS: That should be it. Let me